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No. 94-1511

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

SAMUEL LEWIS, *et al.*,
Petitioners,

vs.

FLETCHER CASEY, JR., *et al.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the district court correctly found a violation of the right of meaningful access to the courts under Bounds v. Smith, 430 U.S. 817 (1977).

2. Whether the remedy adopted by the district court constitutes an abuse of discretion.

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BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

The respondents respectfully urge the Court to deny the petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on December 27, 1994. Casey v. Lewis, 43 F.3d 1261 (9th Cir. 1994), Pet. App. A.

STATEMENT OF THE CASE

On January 12, 1990, twenty-two prisoners filed this class action lawsuit, pursuant to 42 U.S.C. § 1983, challenging the policies and practices of the Arizona Department of Corrections with regard to, inter alia, access to the courts.

Following a three-month bench trial, the district court found that several policies of the Arizona Department of Corrections violated the prisoners' right to meaningful access to the courts. Casey v. Lewis, 834 F. Supp. 1553 (D. Ariz.

1992), Pet. App. B. The court's primary findings related to the circumstances of two overlapping groups of prisoners: those who are unable to use a law library on their own because of literacy problems or problems with English, and those without direct access to law library books. The district court's findings are briefly recounted below.[1]

1. Illiterate Prisoners

In 1989, a system-wide study of prisoners within the Arizona Department of Corrections established that 35% of the adult incarcerated population had a reading level of seventh grade or below. Casey, 834 F. Supp. at 1558, Pet. App. B at 25a. The district court found that those

[1] The district court made numerous factual findings regarding the legal access system provided to prisoners. Petitioners' challenge to those findings was rejected by the court of appeals. See Casey v. Lewis, 43 F.3d at 1266-1270, Pet. App. 4a-13a (adopting findings of the district court).

prisoners who lack functional literacy or who lack English skills are unable to research the law without assistance. Id. As a result of the inability to receive adequate legal assistance, prisoners with literacy problems have had their cases dismissed with prejudice or have been unable to file legal actions. Id.

2. Prisoners Without Direct Access to a Law Library

The district court found that, in most facilities, prisoners in lockdown status have no physical access to the law library. 834 F. Supp. at 1556, Pet. App. B at 21a. Instead, they are allowed to request legal materials by sending a written request, known as a "kite," to the law library. The number of books that can be requested, and the length of time books can be kept, are restricted. 834 F. Supp. at 1557, Pet. App. B at 24a. Often, such prisoners are denied law books unless they

can provide an exact citation. 834 F. Supp. at 1557, Pet. App. B at 22a. They also experience long delays in receiving requested legal materials or legal assistance. Id. Some prisoners in lockdown status are denied even this privilege, leaving them without any access to legal materials. The district court found that prisoners who are subject to these procedures experience "severe interference" with their access to the courts. 834 F. Supp. at 1556, Pet. App. B at 22a.

In other facilities, general population prisoners are allowed physical access to the law library but are not allowed access to the shelves; instead, they must request legal materials from untrained prisoner law clerks or security officers. 834 F. Supp. at 1555, Pet. App. B at 19a-20a. This method of obtaining

access to law books also exists at two lockdown facilities, where prisoners are required to conduct their legal work in cages in the law libraries. 834 F. Supp. at 1556, Pet. App. B at 20a.

3. Sources of Assistance for Illiterate Prisoners and Prisoners Without Direct Access to a Law Library

The district court found that most of the law libraries are staffed by security staff and prisoner law clerks. See 834 F. Supp. at 1558-59, Pet. App. B at 26a-27a. Law clerks and staff, however, are restricted to providing prisoners with requested materials; they do not perform research or assist in drafting. 834 F. Supp. at 1559, Pet. App. B at 28a.

For illiterate prisoners and prisoners without direct access to a law library, the petitioners' sole provision for research and drafting assistance consists of untrained prisoner legal

assistants. Id.[2] However, with regard to prisoners in lockdown status, legal assistants can help only those prisoners with a disciplinary charge or a criminal charge pending. 834 F. Supp. at 1556, Pet. App. B at 22a. Thus, with this exception, prisoners in lockdown status have no access to law books other than through the "kite" system described above, and no assistance from anyone with legal training.

The district court found that there were an insufficient number of legal assistants available to assist prisoners who need legal assistance. 834 F. Supp. at 1559, Pet. App. B at 28a. Moreover, the legal assistants frequently are not sufficiently skilled to provide prisoners

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[2] Law clerks can assist their fellow prisoners only by giving them requested material from the law library stacks. In contrast, legal assistants can help other prisoners perform legal research and draft pleadings and letters to the court. 834 F. Supp. at 1559, Pet. App. B at 28a.

with meaningful assistance. 834 F. Supp. at 1560, Pet. App. B at 30a. Prisoner legal assistants are not required to have any legal training and, in most facilities, petitioners do not provide them with training. 834 F. Supp. at 1560-61, Pet. App. B at 30a-31a.

The district court also found deficiencies in the contents of the law libraries, 834 F. Supp. at 1561-62, Pet. App. B at 32a-33a, and in various other policies and practices, such as the lack of confidentiality in attorney-client telephone calls. See 834 F. Supp. at 1562-65, Pet. App. B at 35a-41a.

The district court appointed a special master to work with the parties to develop a remedy for these violations. Over the course of several months, the special master held five meetings with the petitioners, received five sets of comments

and objections from them, and, with their cooperation, developed the proposed remedy submitted to the court.

The district court then issued a permanent injunction in an unpublished order approving and modifying the remedy proposed by the special master. Pet. App. C at 57a-85a.

The petitioners appealed both the finding that prisoners had been unconstitutionally denied meaningful access to the courts and the district court's remedial order. The court of appeals affirmed the finding of a constitutional violation; it also approved the remedy in most respects. Significantly, however, the court of appeals vacated and remanded the remedial order to the district court, directing it to incorporate the petitioners' request for an opportunity to

object to the fees and expenses of the special master.

On May 2, 1994, the order of the district court was stayed by this Court, pending disposition of this petition for writ of certiorari.

REASONS FOR DENYING THE WRIT

I. THERE IS NO CONFLICT AMONG THE CIRCUITS.

A. This Case Does Not Create a Conflict with Regard to the Scope of Legal Assistance for Prisoners Incapable of Using a Law Library Without Assistance.

The petitioners claim that the decision of the court of appeals in this case that the prison system must provide some form of assistance to prisoners who are incapable of using a law library on their own conflicts with decisions of other circuits. In support of this claim, petitioners cite Hooks v. Wainwright, 775 F.2d 1433, 1436-37 (11th Cir. 1985), cert.

denied, 479 U.S. 913 (1986), and Bee v. Utah State Prison, 823 F.2d 397, 398 (10th Cir. 1987), as holding that the bare provision of an adequate law library satisfies the constitutional right of meaningful access to the courts for all prisoners. However, neither of those cases stands for that principle.

In Hooks v. Wainwright, 536 F. Supp. 1330 (M.D. Fla. 1982), the plaintiffs sought a remedy that required the defendants to provide lawyers to assist prisoners; the prison officials asked the court to approve a library system including prisoner law clerks who were to be given a standardized training course[3] -- that is, the prison officials offered the relief that was approved by the court of appeals in this case. The district court rejected the prison officials' plan. The prison

[3] Id. at 1340.

officials then obtained a certified appeal of a very limited question: whether an adequate plan for legal access necessarily requires the provision of lawyers. See Hooks, 775 F.2d at 1433-34.

The court of appeals answered this question in the negative. It did not state, however, that the bare provision of law books would pass muster. Indeed, the Eleventh Circuit stated that law books are of no use to an illiterate prisoner. Id. at 1436. Hooks simply held that a prisoner who requires more assistance than the mere provision of a law library need not obtain that assistance from a lawyer. Id. at 1437.

Bee v. Utah State Prison involved an illiterate prisoner who was incarcerated in a facility without a law library. The facility provided legal services to prisoners through contract lawyers. 823

F.2d at 398. The prisoner complained that he was unable to obtain assistance from a lawyer past the initial pleading stage. The court held that the assistance of a lawyer through completion of the pleading for a federal habeas corpus or civil rights action satisfied the prisoner's right of access to the courts. Id.

Hooks and Bee addressed the narrow question of whether prisoners had a constitutional right to assistance by lawyers; they did not address the question of whether illiterate prisoners are entitled to a lesser form of assistance, such as fellow prisoners with some legal training. As they did not even address the question presented to the lower courts in this case, those cases can hardly be said to have provided a conflicting answer.

In fact, Bee and Hooks are consistent with the decisions of the other

courts of appeals that have addressed the level of assistance that must be provided to illiterate prisoners. Those courts, in harmony with the court below, have held that a plan for access to the courts that relies upon law libraries must provide some form of assistance for those prisoners incapable of using law libraries on their own. See, e.g., Knop v. Johnson, 977 F.2d 996, 1006 (6th Cir. 1992), cert. denied, 113 S. Ct. 1415 (1993); Valentine v. Beyer, 850 F.2d 951, 956-57 (3d Cir. 1988); Harrington v. Holshouser, 741 F.2d 66, 69 (4th Cir. 1984); Cruz v. Hauck, 627 F.2d 710, 721 (5th Cir. 1980); Battle v. Anderson, 614 F.2d 251, 254-56 (10th Cir. 1980). Significantly, neither the Eleventh Circuit in Hooks,[4] nor the Tenth Circuit in

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[4] In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), the Eleventh Circuit adopted as binding precedent all of the decisions of the former Fifth Circuit that were handed down

Bee, indicated that it was overruling its earlier decision in Cruz or Battle, respectively.

The requirement that some form of assistance must be provided to those prisoners incapable of using a law library flows directly from Bounds v. Smith, 430 U.S. 817 (1977), which is fundamentally at odds with petitioners' position. Bounds held that "the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers." Id. at 828 (emphasis added). In Bounds, the Court reviewed its earlier case law on access to the courts and concluded that earlier cases had consistently required states "to shoulder affirmative obligations to assure all prisoners

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prior to the close of business on September 30, 1981.

meaningful access to the courts." Id. at 824 (emphasis added). The Court in Bounds distinguished "the access rights of ignorant and illiterate inmates ... unable to present their own claims in writing to the courts" from those of "inmates able to present their own cases." Id. at 823-824. The Court noted that for illiterate prisoners, a law library alone is not sufficient; meaningful access "require[s] at least allowing assistance from their literate fellows." Id. (emphasis added). This statement is consistent with the actual relief in Bounds, which included a plan for training prisoner law clerks as research assistants for their fellow prisoners[5] even though the Court

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[5] See id. at 819.

characterized the plan as a "law library" plan.[6]

This reading of Bounds is reinforced by Bounds' discussion of Wolff v. McDonnell, 418 U.S. 539 (1974). The Court in Bounds noted that Wolff involved a prison that maintained an adequate law library. Bounds, 430 U.S. at 824. Wolff nonetheless affirmed a remand to determine if one appointed legal advisor was sufficient to handle prisoner needs for assistance for post-conviction relief and civil rights actions. 418 U.S. at 577-80.

Accordingly, the decision of the court below does not create a conflict among the circuits, and is consistent with this Court's decision in Bounds.

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[6] See id. at 821. Bounds did not address the adequacy of the specific plan because the plaintiffs had not sought certiorari on this issue.

B. This Case Does Not Create a Conflict with Regard to Whether a "Library Plan" for Meaningful Access to the Courts May Require Some Form of Trained Prisoner Assistance to All Prisoners.

Petitioners claim that the lower courts in this case held that a "library plan" to provide meaningful access to the courts must provide all prisoners, even those able to use a library on their own, with the assistance of trained fellow prisoners, and that this ruling conflicts with that of other circuits. This claim is based on a faulty interpretation of the lower courts' rulings in this case. As the court of appeals noted, "Defendants erroneously assert that the injunction mandates legal assistance for all prisoners." Casey v. Lewis, 43 F.3d at 1271, Pet. App. A at 16a.

As noted above, the district court in this case concluded that the petitioners had denied the right of

meaningful access to the courts to two groups of prisoners -- those with literacy problems and those lacking direct access to a law library. The remedial order tracks this finding by stating that legal assistance should be provided to prisoners who "because of language factors or lack of access to the law library, or for other reasons, are unable to perform adequate legal research and writing." Pet. App. C at 69a.

In the course of developing a remedy, the special master offered to develop a plan in which the prisoner legal assistants would be available only to prisoners with literacy problems or without direct access to a law library. However, the petitioners stated that they did not wish to shoulder the administrative inconvenience of setting up and administering a system of eligibility for

the services of the prisoner legal assistants and would prefer to make those services available to all prisoners.[7] On the basis of these discussions, the special master did not include any language establishing eligibility criteria for the services of the prisoner legal assistants.

Moreover, after the special master issued an initial draft of the proposed remedy, the petitioners filed five sets of objections over an eight-month period. In none of these objections did the petitioners contest the lack of eligibility criteria for the services of

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[7] The meetings of the special master with the parties were not recorded. As indicated in their brief in the court of appeals, respondents are prepared to establish on remand that the special master, during the formal meetings with the parties, asked petitioners if they would prefer an eligibility system, and was told that the petitioners preferred the existing system in which the Department of Corrections does not administer eligibility requirements for the services of the prisoner legal assistants.

the prisoner legal assistants.[8] Thus, when petitioners complain at page 3 of their petition that they must provide trained legal assistants to all prisoners, they are complaining about a feature of the remedy they could have altered had they so chosen.

The court of appeals' ruling went no further than that of the district court. The court did not hold that a library plan necessarily requires assistance to prisoners who are able to use a law library on their own; indeed, it cited the provision of the remedial order stating that legal assistance is to be provided to

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[8] See Defendants' Objections to Implementation of the Gluth Injunction at Particular Facilities, Jan. 22, 1993; Defendants' Additional Objections/ Modifications to Implementation of the Gluth Injunction to Particular Facilities, Feb. 19, 1993; Defendants' Objections to Plaintiffs' Proposed Modifications, March 19, 1993; Defendants' Additional Objections to Plaintiffs' Proposed Modifications, April 28, 1993; Defendants' Objections to the Special Master's Proposed Order, Aug. 13, 1993.

prisoners who "because of language factors or lack of access to the law library, or for other reasons, are unable to perform adequate legal research and writing." See Casey v. Lewis, 43 F.3d at 1271, Pet. App. A at 16a.

Accordingly, the lower court decisions cited by petitioners as creating a conflict are actually consistent with the decisions of the lower courts in this case. Cepulonis v. Fair, 732 F.2d 1, 6 (1st Cir. 1984), rejected a remedy involving law students in addition to an adequate law library in favor of the defendants' proposal that a prisoner law clerk assist his fellow prisoners. Similarly, the law library plan upheld in Lindquist v. Idaho State Bd. of Corrections, 776 F.2d 851, 857 (9th Cir. 1985), included prisoner law

clerks who were being trained in legal research and writing.[9]

Petitioners also cite Campbell v. Miller, 787 F.2d 217, 229-30 (7th Cir.), cert. denied, 479 U.S. 1019 (1986). Campbell involved an individual plaintiff who was neither illiterate nor denied direct access to a law library. Campbell does not address the issue of the assistance that prisons must provide to prisoners who are illiterate, denied access to a law library, or otherwise unable to use a law library. Moreover, Campbell does not specify whether the "trained legal assistance" it rejected as not required by

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[9] Even if Lindquist were inconsistent with the decision of the court of appeals in this case, such an intra-circuit conflict would not warrant review by this Court. See S. Ct. R. 10.1(a); see also Davis v. United States, 417 U.S. 333, 340 (1974). Such intramural differences are to be resolved by rehearing en banc, a remedy petitioners did not seek.

the Constitution involved prisoner law clerks, lawyers, or paralegals.

The last case cited by petitioners in support of their claim of a conflict is Morrow v. Harwell, 768 F.2d 619, 623 (5th Cir. 1985). The court in Morrow stated its holding as follows: "[T]he bookmobile checkout system, accompanied by circumscribed assistance from law students, does not meet the Bounds requirement." Id. If anything, this holding appears to require even greater assistance to prisoners than was mandated by the lower courts in this case.

The petitioners assert that the court below, see Casey v. Lewis, 43 F.3d at 1270, Pet. App. A at 14a, recognized a conflict among the circuits as to whether any assistance must be provided to prisoners with access to an adequate law library. Read in context, however, the

court below simply makes the same points respondents make here: 1) the linchpin of Bounds is "meaningful access; and 2) bare physical access to a law library for prisoners who cannot read is not meaningful. If a prison opts to provide access to the courts through a "library plan," a district court may require the plan to include prisoners with some form of training to assist those prisoners who are unable to use a law library on their own.[10]

Accordingly, the petitioners have failed to identify any conflict among the

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[10] Prisoners with some minimal, uncertified training are not "persons trained in the law" under Bounds; they are rather part of an appropriate law library plan. If casually trained prisoner law clerks are "persons trained in the law," then a prison could satisfy its Bounds responsibilities through offering such clerks to assist other prisoners, without making adequate law libraries generally available. No court has suggested that such limited assistance to all prisoners could possibly satisfy Bounds.

circuits presented by the decision of the court below.

II. THIS CASE DOES NOT PRESENT THE ISSUE OF WHETHER "ACTUAL INJURY" IS REQUIRED IN CASES BROUGHT UNDER BOUNDS.

At page 8 of their petition, petitioners argue that "[d]uring trial, respondents presented no evidence whatsoever that illiterate or non-English speaking prisoners were actually denied access to the courts or that ADOC's efforts to assist them were insufficient." For several reasons, a grant of certiorari on this issue would be inappropriate.

First, regardless of whether a showing of actual injury was required in this case, the respondents in fact made such a showing. The district court made explicit findings based on evidence that prisoners with literacy problems had had their cases dismissed with prejudice, and had been unable to file legal actions as a

result of their inability to receive adequate legal assistance. 834 F. Supp. at 1558, Pet. App. B at 25a. The petitioners' challenge to these findings was rejected by the court of appeals. See Casey v. Lewis, 43 F.3d at 1267, Pet. App. A at 8a.

Accordingly, because the district court made explicit findings of "actual injury," this case is not an appropriate vehicle for the Court to determine whether, and to what extent, an "actual injury" requirement applies to cases under Bounds.

In addition, the issue of whether a showing of actual injury was required in this case was not squarely presented by petitioners to the court of appeals. The issue was not presented as one of the "Issues Presented for Review" in Petitioners' Opening Brief before the Ninth Circuit, see Appellants' Opening Brief at 3, and the brief did not present legal

argument on this issue.[11] It is presumably for this reason, as well as because respondents had proven actual injury, that the court of appeals found that "this issue [was] not ... before [it]." Casey v. Lewis, 43 F.3d at 1267, n.3, Pet. App. A at 6a n.3.[12]

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[11] The petitioners' Opening Brief before the Ninth Circuit contains three references to this issue, each of which is simply a bald statement that respondents failed to make a showing of injury. At no point did they present legal argument as to whether such a showing was required.

[12] The court stated in the footnote that it did not have to reconsider Vandelft v. Moses, 31 F.3d 794 (9th Cir. 1994), which applied an "actual injury" requirement. As stated in the text, the court below had no reason to reconsider Vandelft because respondents here proved "actual injury."

Moreover, Vandelft involved only one isolated component of access in an individual case. A number of courts have developed principles for determining when a showing of "actual injury" is required. See Sowell v. Vose, 941 F.2d 32, 34 (1st Cir. 1991); Chardley v. Baird, 926 F.2d 1057, 1063 (11th Cir. 1991); Sands v. Lewis, 886 F.2d 1166, 1171 (9th Cir. 1989); Peterkin v. Jeffes, 855 F.2d 1021, 1041 (3d

It would be imprudent for this Court to grant certiorari on an issue that has not been passed on by the court below. Supreme Court Rule 17 specifies the considerations that guide the Court in determining whether to grant a petition for certiorari. Each of those considerations contemplates review of a decision of a federal court of appeals or a state court of last resort. Since the court of appeals did not pass on the issue of whether actual injury is required in this case, or in any other case brought under Bounds, there is no decision to review on this issue.

Cir. 1988); DeMallory v. Cullen, 855 F.2d 442, 448 (7th Cir. 1988). All of these cases suggest that no showing of "actual injury" was in fact required in this case, a class action involving the entire system under which the respondents attempt to gain access to the courts.

III. THE REMEDY, AS MODIFIED BY THE COURT OF APPEALS, WAS APPROPRIATE, NOT OVERLY INTRUSIVE, AND INCORPORATED THE LEGITIMATE CONCERNS OF THE PETITIONERS.

The responsibility of the Arizona Department of Corrections to provide meaningful access to the courts was established almost twenty years ago, when the Supreme Court issued its ruling in Bounds in 1977. The precise nature of that responsibility was specifically litigated in the context of the Central Unit at the Arizona State Prison at Florence. See Gluth v. Kangas, 773 F. Supp. 1309 (D. Ariz. 1988), aff'd, 951 F.2d 1504 (9th Cir. 1991) (finding a constitutional violation and imposing a remedy similar to the remedy in this case).

Nonetheless, the petitioners took no action to cure the same constitutional violations at other Department of Corrections facilities. Indeed, in March

1991 the petitioners rescinded a draft state-wide policy developed after Gluth that would have provided for Department of Corrections training and competency screening for the prisoner legal assistants.[13]

Despite this history, the district court set up a careful and deliberate consultative process to develop the appropriate remedy. In numerous respects, the special master modified the proposed order to accommodate the concerns and objections of petitioners.[14] Indeed,

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[13] See Exh. 216 ¶ 5.3 (referring to training course for prisoner legal assistants). This reference to training was eliminated in a policy revision dated March 4, 1991. See Ex. 790.

[14] See, for example, the commentary to the remedy, which notes that in response to defendants' concerns, the hours of operation of the law library were reduced; the number of facilities required to maintain law libraries was reduced; the expense for legal assistant training was reduced; the availability of notary services was reduced; and the time to

the district court explicitly stated its willingness to modify the injunction "for documented problems that occur during implementation." Order, Sept. 27, 1993, at 5. Accordingly, the order represents a thoughtful and cautious approach to remedying the constitutional violations, based on petitioners' suggestions and the experience accumulated under Gluth.

Moreover, petitioners' claim that the remedial order is overly intrusive is based on several characterizations of that order that are materially incorrect. For example, contrary to the statement at page 3 of the petition, the order does not require that every law library have a librarian, or that every librarian have a

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respond to prisoner requests was increased. Pet. App. C at 81a-85a.

law or paralegal degree.[15] Similarly, petitioners claim that "every prison unit with a capacity of 150 inmates" must provide a fully equipped law library. Petition at 3. In fact, the order does not require the defendants to build a single law library because it exempts from this requirement those facilities that do not already have a law library. See Pet. App. C at 61a. These exemptions were responsive to petitioners' request that those prisons without law libraries not be required to build them. See Pet. App. C at 81a.

Petitioners claim that the remedial order requires law libraries to be

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[15] See Pet. App. C at 66a-67a (stating that librarian can provide services for two law libraries, provided that second facility meets size limitations; and requiring that librarians must have library science, law or paralegal degree, with preference in hiring to person with law or paralegal decree. The order does not require petitioners to pay more in order to hire staff with law or paralegal degree).

open fifty to eighty hours per week, regardless of demand. Petition at 3. In fact, the remedial order sets a basic requirement of fifty hours per week, with an increase in those hours required only for those facilities that place certain restrictions on prisoner access to the law library. Pet. App. C at 62a.[16] Thus, petitioners have the option of limiting the hours at each library to fifty per week. Any claim that this will impose undue burdens on petitioners is undercut by a document they submitted to the court of appeals that indicates that many of the law

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[16] These provisions were based on a factual finding by the district court that, at the time the action was filed, prisoners had insufficient time to use the law libraries. 834 F. Supp. at 1565, Pet. App. B at 41a.

libraries already operate for at least fifty hours per week.[17]

The petition also indicates that the remedy requires a legal assistant training program of "approximately 60 hours in length to be taught by lawyers, law students, or trained paralegals at each law library twice a year, ad infinitum." Petition at 3. Most of the training will be provided by videotape. Pet. App. C at 71a-72a. The minimum total hours of training required, including viewing videotapes, is fifty, not sixty. Id. The order contemplates that the live training will be provided by employees of the Department of Corrections. Pet. App. C at 84a. Thus, the major expenditure is a one-time preparation of a videotape; the order contemplates that these training

[17] See Reply Brief of Defendants/Appellants, Appendix I, in the Ninth Circuit Court of Appeals.

requirements will engender "little additional or ongoing costs." Id.

Petitioners state at page 4 that the order "allow[s] inmates direct access to the library stacks, unless petitioners can first document an actual security risk." In addition to provisions for limiting shelf access, however, the petitioners are also allowed to deny any library access to certain prisoners. See Pet. App. 61a. This provision for delaying or denying access contains precisely the same language as the current policy of the Arizona Department of Corrections.[18]

Nor is it the case that the remedial order allows prisoners to regulate the time and manner in which they gain access to law libraries, as petitioners

[18] Compare Pet. App. C at 61a with Ex. 216 ¶ 6.22. Understandably, in light of this fact, the petitioners, in their five sets of objections, see supra note 8, never challenged or criticized this provision.

contend. Petition at 4. A review of the remedial order demonstrates that, within broad parameters necessary to ensure actual access to a law library, the petitioners select the schedule of library operations, determine which prisoners are not eligible for direct access to a law library collection, establish the procedure by which a prisoner requests permission to use the law library, determine when a particular request for access to a law library cannot be honored, and determine when to reserve specific parts of the law library for prisoners with different classifications. See Pet. App. C at 61a-65a, 83a.

Finally, petitioners erroneously claim that the order's requirement that the law libraries include a set of Pacific Reporters is "directly contrary" to this Court's decision in Bounds. See Petition

at 10-11 n.8. In Bounds, the Court expressly declined to address the adequacy of the law library contents because certiorari had not been granted on that issue. See Bounds, 430 U.S. at 821 n.7. Moreover, the remedial order allows the Arizona Department of Corrections to discontinue its subscriptions to the Arizona Reporters.[19] See Pet. App. C at 69a. The requirement to maintain Pacific Reporters serves as the functional equivalent of the requirement to maintain sets of state reporters noted in Bounds, 430 U.S. at 819 n.4.[20]

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[19] At any rate, the effect of this provision should be minimal, since petitioners informed the district court that many of the law libraries already contain Pacific Reporters. Defendants' Additional Objections/Modifications to Implementation of the Gluth Injunction to Particular Facilities, Feb. 19, 1993, at 6.

[20] The petitioners also take issue with the fees charged by the special master appointed by the district court. See Petition at 2 n.2. The amount of those

Accordingly, this case does not afford the Court an appropriately focused opportunity to review questions regarding the district court's discretion to fashion remedies for constitutional violations.

CONCLUSION

For the reasons set forth above, respondents respectfully request that the Court deny the petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit.

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fees is not presented for certiorari because the petitioners have already obtained the relief that they requested on this issue. The court below vacated and remanded this issue to the district court, directing it to incorporate into the remedial order petitioners' request for an opportunity to object to the fees of the special master. In light of this remand, respondents will reserve for the district court their disagreements with the assertions made by petitioners on this issue.

Respectfully submitted,

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